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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
13 **WESTERN DIVISION**

14 **INDUSTRY CONCEPT HOLDINGS,**  
15 **INC., a Colorado corporation and PRIMP,**  
**INC., a Colorado corporation,**

16 Plaintiffs,

17 vs.

18 **ALAN ELGORT, an individual, GREG**  
**LORBER, an individual, LARRY**  
19 **MONTOYA, an individual, ANDREA**  
**PAYNE, an individual, FANNY**  
20 **GARCIA, an individual, PACIFIC**  
**APPAREL, LLC, a Nevada corporation,**  
21 **JULIE SAENZ, an individual,**  
**HAUTELOOK, a California corporation,**  
22 **MARQUETTE COMMERCIAL**  
**FINANCE, a Texas corporation, VL**  
23 **RAYMER, an individual, and DOES 1**  
24 **through 10,**

25 Defendants.

26 **AND RELATED COUNTER-**  
27 **COMPLAINT.**  
28

Case No.: CV 11-04444 CAS (JEMx)

**DEFENDANT VL RAYMER'S**  
**NOTICE OF MOTION AND**  
**MOTION FOR SANCTIONS**  
**AGAINST PLAINTIFFS AND THEIR**  
**FORMER COUNSEL WENDY C.**  
**FREEDMAN**

**[Supporting Declarations of Jon M.**  
**Leader and VL Raymer filed**  
**concurrently]**

Date: October 24, 2011

Time: 10:00 a.m.

Place: Courtroom 5,  
312 N. Spring Street

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on October 24, 2011, at 10:00 a.m. in Courtroom 5 of this Court, 312 N. Spring Street, Los Angeles, CA 90012, before the Honorable Christina A. Snyder, defendant VL Raymer will move the Court for an Order granting sanctions in the total amount of \$96,333.59 against Plaintiffs (including their principals and controlling entities Craig Edelman and Edwards Investments) and their former counsel Wendy C. Freedman, jointly and severally.

This motion is made following conferences of counsel pursuant to L.R. 7-3 which took place on August 24, 2011 with counsel for Plaintiffs and September 15 and 16, 2011 with counsel for Ms. Freedman.

Defendant Raymer's Motion for Sanctions is based on this Memorandum of Points and Authorities, the Court's Orders in these proceedings, all the papers and pleadings filed by Ms. Raymer and other parties to this proceeding, the Declaration of Jon M. Leader, the Declaration of VL Raymer, and the argument and testimony presented at hearings on June 8, July 7, August 1, and August 9, 2011, all facts of which the Court may take judicial notice, and such further evidence and argument as the Court may consider at any hearing on Ms. Raymer's Motion.

DATED: September 26, 2011

LEADER GORHAM LLP

By: /s/Jon M. Leader

Jon M. Leader

LAW OFFICES OF KAREN J.  
BERNSTEIN, LLC

By: /s/Karen J. Bernstein

Karen J. Bernstein (*Pro Hac Vice*)

Attorneys for Defendant VL RAYMER

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                                   **I. INTRODUCTION**

3           Ms. Raymer should never have been named in this lawsuit. Unlike the other  
4 defendants, Ms. Raymer is an unwitting victim in these proceedings. There is no  
5 doubt Plaintiffs and Ms. Freedman conspired to conjure up an excuse to join Ms.  
6 Raymer with the apparel defendants so they could fraudulently obtain transfer of her  
7 Primp.com domain name to them. They thought by bullying, harassing, scaring, and  
8 outspending Ms. Raymer, and by falsely accusing her of being an apparel  
9 counterfeiter, this plan would succeed. It didn't.

10          Plaintiffs themselves were abundantly aware of the events in this litigation  
11 and actively involved -- attending hearings and making sworn declarations. They  
12 cannot hide behind Ms. Freedman and are equally culpable for the unwarranted  
13 litigation against Ms. Raymer.

14          Plaintiffs' and Ms. Freedman's misrepresentations, concealment of  
15 documents, suppression of evidence, and multiplication of these proceedings is  
16 legion. There is no excuse for what they did and they appear to have no remorse for  
17 their failed attempts to obtain Primp.com and extort money from Ms. Raymer.  
18 Having never been in the apparel industry, Ms. Raymer has been forced to expend  
19 almost \$100,000 in legal expenses to defend her professional reputation and because  
20 Plaintiffs told her that her computers and bank accounts would be seized. It would  
21 simply be an injustice not to grant sanctions against Plaintiffs and Ms. Freedman for  
22 the nightmare that this case has become for Ms. Raymer.

23          For the Court's convenience, attached as Exhibits A and B are charts showing  
24 the chronology of the case and summarizing the material omissions,  
25 misrepresentations, and concealments made by Plaintiffs and Ms. Freedman.  
26  
27  
28

## II. FACTS<sup>1</sup>

### A. Pre-Litigation Activity

On April 26, 2011, Ms. Freedman e-mailed an April 23, 2011 letter to Ms. Raymer demanding she cease and desist using the Primp.com domain name and transfer it to Plaintiffs. A copy of the letter was also sent via Certified Mail and received by Ms. Raymer at her P.O. Box in Gilroy, California. Ms. Freedman's April 23 letter did not mention the LOVE CRUSH mark, any copyright violations, or any allegations of apparel counterfeiting to put Ms. Raymer on notice of Plaintiffs' purported superior trademark rights and copyrights. Ms. Freedman unreasonably gave Ms. Raymer only three days to respond to the letter. Ms. Raymer's former attorney responded to Ms. Freedman that Ms. Raymer could not have been aware of the PRIMP trademark when she registered the Domain Name in 1998 as Plaintiffs' use of the trade name and trademark for PRIMP did not begin until at least five years later, so she could not have registered her Domain Name in bad faith. *See* Decl. of Raymer in Opp. to Pltfs' Application for TRO ("TRO App"), ¶ 4, Exh. A (Dkt No. 63) ("Raymer Decl."). This is because both ICANN Policy and Lanham Act, 15 U.S.C. § 1125(c) ("ACPA") require that the trademark being asserted must have been first used and/or acquired distinctiveness *before the domain name was registered*. *See* ICANN Policy 4(a)(i); 15 U.S.C. § 1125 (must prove "(I) in the case of a mark *that is distinctive at the time of registration of the domain name*, is identical or confusingly similar to that" of the trademark being asserted).

A reasonably prudent trademark practitioner would have known to access the Whois historical database for Primp.com *before* sending the cease and desist letter to Ms. Raymer and seen that Ms. Raymer has been the named registrant of the domain name for at least five years before the PRIMP trademark purportedly was

<sup>1</sup> For a more complete statement of the relevant facts, please see VL Raymer's Opposition to OSC re Preliminary Injunction (Dkt Nos. 62-66) and Memoranda in Opposition to TRO, *Ex Parte* App for OSC re Preliminary Injunction and Request for Sanctions (Dkt Nos. 104, 113, 115).

1 first used.<sup>2</sup> *See* Raymer Decl., ¶ 4, Exh. A. Ms. Raymer’s former attorney’s  
 2 response letter should have ended any prospect of litigation with Ms. Raymer, but  
 3 Plaintiffs and Ms. Freedman pressed on anyway and alleged in the Complaint and  
 4 First Amended Complaint (“FAC”) that the Primp trademark was “distinctive at the  
 5 time the infringing domain name[] . . . primp.com w[as] registered, and was, and is  
 6 protected by” Lanham Act, 15 U.S.C. § 1125(c). *See* FAC, at ¶ 132 (Dkt No. 39).

7 If Ms. Freedman is to be believed -- she testifies in sworn declarations in  
 8 support of the TRO and Motion to Seal [at ¶ 4 (Dkt No. 2) and at ¶ 3 (Dkt No.7)]  
 9 that she is an expert on “counterfeiting of trademarks in many districts on behalf of  
 10 trademark owners” -- then she would have known simply by viewing the site located  
 11 at Primp.com that Ms. Raymer was not selling goods and was not an apparel  
 12 counterfeiter. Indeed, as discussed below, the June 2, 2011 Court-ordered seizure of  
 13 items from the Pacific Apparel Defendants would also have revealed that Ms.  
 14 Raymer is not associated with co-defendants and is not an apparel counterfeiter, but  
 15 Ms. Freedman and Plaintiffs concealed those material facts from the Court.

#### 16 **B. The Temporary Restraining Order and Complaint**

17 On May 25, 2011, one week after Ms. Raymer’s former attorneys responded  
 18 to Ms. Freedman’s cease and desist letter, Ms. Freedman signed and filed for  
 19 Plaintiffs the TRO, Seizure Order and Order to Show Cause, with several sworn  
 20 declarations signed by several of Plaintiffs’ executives. Along with the TRO, Ms.  
 21 Freedman signed and filed on Plaintiffs’ behalf a Complaint against Ms. Raymer  
 22 alleging ten claims for relief: (1) federal trademark counterfeiting, (2) federal  
 23 trademark infringement, (3) federal unfair competition, (4) federal trademark  
 24 dilution, (5) federal copyright infringement, (6) state statutory common law  
 25 trademark counterfeiting, (7) state statutory unfair competition, (8) state statutory

---

26  
 27 <sup>2</sup> Whois is “a query and response protocol that is widely used for querying databases that store the registered users or  
 28 assignees of an Internet resource, such as a domain name.” <http://en.wikipedia.org/wiki/Whois> (last visited 9/21/11).  
 There are also professional tools like Domaintools.com, which for a nominal subscription display every registrant of  
 the domain, which may date back to 2000 but not always. The Whois historical records for Primp.com only go back  
 to 2005. *See* Raymer Decl. at ¶4 & Exh. A (evidencing Primp.com had been registered to Ms. Raymer since 1998).



1 trademark dilution, (9) violations of ACPA, and (10) imposition of a constructive  
2 trust, all of which falsely claim she was part of an apparel counterfeiting conspiracy,  
3 violated Plaintiffs' so-called copyrights, both the PRIMP and LOVE CRUSH  
4 trademarks, and was a cyber squatter by virtue of her registration of the domain  
5 name Primp.com. All of the papers were filed under seal so no one could see them.

6 In the TRO, Plaintiffs asserted Ms. Raymer was an apparel counterfeiter but  
7 without including a shred of evidence in their moving papers. There is only a single  
8 passing reference to Ms. Raymer in all of the papers filed by Ms. Freedman on  
9 behalf of Plaintiffs in their numerous *ex parte* applications, motions, requests for a  
10 TRO, and for preliminary injunction. This single reference is in the TRO App, at  
11 page 10, lines 6-11 (Dkt No. 5) and falsely states:

12  
13 VL Raymer registered primp.com to facilitate the counterfeiting of the  
14 Primp clothing. Upon information and belief, Fanny Garcia, Julie Saenz and  
15 VL Raymer manufactured and distributed, advertised, offered for sale, and/or  
16 sold counterfeit Primp clothing bearing the Primp and Love Crush marks.  
17 Neither Garcia, Saenz nor VL Raymer has ever been a Primp clothing  
18 licensee. (Milonas Decl." ISO Plaintiffs' *Ex Parte* Application ("Milonas  
19 Decl."), Paragraph 11).

20 There is no evidentiary basis whatsoever for this allegation as the Milonas  
21 Declaration (Dkt No. 8) does not mention Ms. Raymer at its paragraph 11 or  
22 elsewhere. Ms. Freedman knew this and so did Plaintiffs and Mr. Milonas  
23 (President of Industry Concept Holdings). It was an impossibility that Ms. Raymer  
24 "registered Primp.com to facilitate the counterfeiting of the Primp clothing" since  
25 she registered the domain name in 1998, five years before Plaintiffs' purported first  
26 use date of the mark.

27 The TRO App also falsely states that "Primp does not sell its high-end goods  
28 through licensees or franchisees . . . ." TRO App, at 4:11 (Dkt No. 5). This material  
false statement is repeated in the Complaint and the FAC. *See* Complaint, at 6:24;  
FAC, at 8:24. These statements are belied by Ms. Freedman's representation to the

1 Court at the July 7, 2011 OSC that one of ICH's 8K quarterly report showed "[t]here  
2 were licensing agreement [*sic*] one in Japan and there was a second agreement."  
3 Transcript of July 7, 2011 OSC ("Transcript"), at 7:8-10.

4 Ms. Freedman's drafting of the Complaint and FAC characterizing the Primp  
5 mark as "famous" for dilution purposes was a total and complete fiction and is  
6 legally incorrect. Specifically, no sales records were produced, no expense sheets or  
7 tax returns were presented to prove that the less than four-year old federally  
8 registered PRIMP trademark acquired distinctiveness or secondary meaning. All  
9 that was submitted was an empty declaration of Mr. Milonas, which falsely states  
10 ICH is a publicly held company (as will be explained below) and purported to claim  
11 the company spent "millions of dollars on advertising its goods and services bearing  
12 the Primp and Love Crush marks and that Primp does not license its goods." These  
13 statements are false and Plaintiffs and Ms. Freedman knew this. *See* Milonas Decl,  
14 at ¶ 3, 11 (Dkt No. 8).

15 Ms. Freedman, as a trademark professional, knew or should have known there  
16 was no legal basis to allege the PRIMP trademark was "famous" within the meaning  
17 of 15 U.S.C. § 1125(c).<sup>3</sup> Also, Ms. Freedman and Plaintiffs knew the Primp mark  
18 exists in a crowded field of marks and is not a distinctive mark or capable of  
19 acquiring secondary meaning, which requires substantial evidence, none of which is  
20 presented in the Milonas Declaration. Indeed, Plaintiffs were well aware of this fact  
21 as Primp, LLC (the then holder of the Primp trademark registration) was involved in  
22 a Trademark Trial and Appeal Board Cancellation Proceeding over the Primp mark

---

23 <sup>3</sup> The Federal Trademark Dilution Act defines a "famous" mark as follows:

24 **(2) Definitions**

25 (A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming  
26 public of the United States as a designation of source of the goods or services of the mark's owner. In  
determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant  
factors, including the following:

- 27 (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or  
publicized by the owner or third parties.  
28 (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.  
(iii) The extent of actual recognition of the mark.  
(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on  
the principal register.

1 with Primp Make Up Lounge, so they were well aware of competitive uses of the  
2 name “Primp.”

3 As explained in Mr. Leader’s Declaration in Support of Ms. Raymer’s  
4 Opposition to Preliminary Injunction [at ¶¶ 2 - 5 (Dkt No. 62)], Plaintiff’s trademark  
5 “is only one of many ‘Primp’ businesses in a crowded marketplace.” Further, the  
6 fact that Ms. Freedman and Plaintiffs did not assert any claims against the domain  
7 registrant of Primp.net, which features pay per click ads for women’s clothing,  
8 emphasizes precisely why Ms. Raymer is singled out. Simply put, she had a good  
9 domain name with the top level domain extension “.com” and Plaintiffs wanted it.  
10 The Primp.net domain name would have been a much easier target, especially since  
11 the domain name had been registered years *after* the purported first use date of the  
12 Primp mark.

13 **C. The TRO and Complaint are “Served” on Ms. Raymer**

14 Plaintiffs’ and Ms. Freedman’s malicious behavior continued on June 7, 2011,  
15 five days after the cut-off date for defendants to oppose Plaintiffs’ Motion for the  
16 Preliminary Injunction, when Ms. Freedman sent another e-mail to Ms. Raymer,  
17 attaching the Complaint and the TRO /Seizure Order and with the specific intent to  
18 scare Ms. Raymer stating that she had been “served,” which was factually and  
19 legally incorrect. *See* concurrently filed Declaration of VL Raymer in Support of  
20 Motion for Sanctions, at ¶¶ 5-7.

21 Ms. Freedman succeeded in frightening Ms. Raymer for her family’s safety.  
22 After reviewing the TRO and Seizure Order, Ms. Raymer could not sleep at night  
23 and suffered psychological and emotional distress, believing that U.S. Marshalls  
24 would come to her home and beat down the door in the middle of the night. She  
25 thought the TRO restrained her from accessing her bank accounts or conducting her  
26 day-to-day business. *See* Raymer Decl., *Id.*, ¶ 7.

27 **D. The June 8, 2011 OSC Hearing**

28 The Court set a June 8, 2011 OSC hearing. Several defendants were unable

1 to oppose the preliminary injunction motion as the entire case had been sealed and  
2 no one could access the necessary filings. Accordingly, the Court continued the  
3 hearing to July 7 and unsealed the case file. However, Plaintiffs and Ms. Freedman  
4 should have informed the Court at the June 8 hearing that they were withdrawing the  
5 TRO against Ms. Raymer since there was nothing uncovered during the June 2  
6 seizure to connect her with the Pacific Apparel Defendants. That was not the case.

7 **E. The First Amended Complaint**

8 Ms. Bernstein (counsel for Ms. Raymer) spoke with Ms. Freedman on June  
9 20, although she had not yet been formally retained to represent Ms. Raymer in this  
10 matter. Exactly a week after Ms. Bernstein and Ms. Freedman spoke, and ten days  
11 before the July 7 continued OSC hearing, Plaintiffs filed their FAC. The “Parties”  
12 section no longer specifically named Ms. Raymer or described her purported  
13 infringing activities to put her on notice of the allegations against her. Further, the  
14 FAC no longer contained federal trademark counterfeiting, trademark infringement,  
15 or copyright infringement claims against Ms. Raymer but still maintained the  
16 remaining claims for relief, including the ACPA claim.

17 At that point, Ms. Freedman and Plaintiffs admitted Ms. Raymer was not an  
18 apparel counterfeiter and should have brought this to the Court’s and Ms. Raymer’s  
19 attention since the seizure did not produce any evidence of Ms. Raymer’s  
20 association with co-defendants, but they pressed on anyway.

21 **F. Telephone Call Between Ms. Bernstein and Ms. Freedman Prior to**  
22 **the July 7 Continued OSC Hearing**

23 Before the July 7 OSC and after Ms. Raymer retained Ms. Bernstein and  
24 Leader Gorham LLP, Ms. Bernstein called Ms. Freedman to say she was authorized  
25 to accept service of the Complaint. Ms. Freedman told Ms. Bernstein that she  
26 would deliver the Complaint at the hearing, which was untrue and never happened.  
27 Ms. Bernstein also asked Ms. Freedman and Plaintiffs: (1) if they would stipulate to  
28 Ms. Raymer filing a preliminary injunction opposition (this request was refused); (2)

1 what they sought to restrain Ms. Raymer from doing if an injunction issued; and (3)  
2 to cease their campaign to bring Ms. Raymer into the litigation as Ms. Raymer is not  
3 an apparel counterfeiter and it would only lead to sanctions against her and her  
4 client. Before hanging up the phone on Ms. Bernstein, Ms. Freedman stated that  
5 Plaintiffs' goal in obtaining a preliminary injunction was to prohibit Mr. Raymer  
6 from using the Primp.com domain name, but nowhere in Plaintiffs' papers is the  
7 domain name mentioned or this relief requested. *See* Bernstein Decl. in Support of  
8 Preliminary Injunction Opposition, at ¶¶ 9-11 (Dkt No. 65).

9 **G. The July 7 Continued OSC re Preliminary Injunction**

10 At the July 7, 2011 OSC, Ms. Freedman knowingly made false and  
11 misleading statements. Specifically, Ms. Freedman stated that ICH and Primp are  
12 publicly held companies. *See* Transcript, at 6:22-25. According to SEC records,  
13 ICH was publicly held at one time, but was delisted from the Penny Stock Exchange  
14 on April 18, 2011 for delinquency in submitting required financial disclosures. *See*  
15 concurrently filed Declaration of Jon M. Leader ("Leader Decl."), ¶ 3, Exh. 1. The  
16 TRO App signed by Ms. Freedman, which post-dates the April 18, 2011 delisting,  
17 falsely states Plaintiffs are "publicly held." *See* TRO App, at 2:19-20 (Dkt No. 5).

18 The Court dissolved the TRO at the July 7 hearing. Not once during the  
19 hearing did Ms. Freedman disclose to the Court that the Preliminary Injunction was  
20 not applicable to Ms. Raymer because the FAC had withdrawn the federal  
21 trademark counterfeiting claim for relief against her or that there was no evidence  
22 uncovered during the June 2, 2011 seizure of the Pacific Apparel Defendants to  
23 connect Ms. Raymer to them. Craig Edelman of Edwards Investments, LLC was  
24 also present at the hearing as an observer. Leader Decl., ¶ 5. The Court continued  
25 the motion hearing to August 1 and ordered a briefing schedule, with the parties to  
26 file additional materials by July 21 (Plaintiffs) and July 28 (Defendants). *See* Order  
27 (Dkt No. 59).

**H. Plaintiffs' Last Minute Attempt to Withdraw the Preliminary Injunction Motion Against Ms. Raymer**

On July 21, 2011, Plaintiffs filed several declarations in support of their Motion but *none* were directed to Ms. Raymer. Accordingly, Ms. Raymer's counsel wrote to Ms. Freedman on July 22 and asked whether Plaintiffs were maintaining a preliminary injunction request against Ms. Raymer. This letter also pointed out the deficiencies in Plaintiffs' Motion and prior application, the lack of any evidence concerning Ms. Raymer, and requested the Motion be withdrawn as to Ms. Raymer. To avoid the expense of filing a supplemental opposition, counsel for Ms. Raymer asked for a response by the close of business on Monday, July 25. *See* Leader Decl. ISO Raymer Supp'l Opp to Preliminary Injunction, at ¶ 2-4, Exh. 1(Dkt No. 113).

Ms. Freedman did not timely respond and Ms. Raymer was required to have her attorneys prepare the Supplemental Opposition. However, after business hours on July 27, two days after she was to have responded to Ms. Raymer's counsel's letter and in contravention of L.R. 7-3, Ms. Freedman left a voicemail and sent an email offering to withdraw the Preliminary Injunction Motion as to Ms. Raymer and provided a draft Stipulation without any explanation for the delay in responding or the reasons for withdrawing the Preliminary Injunction. Indeed, Ms. Raymer did not have the opportunity to respond before Ms. Freedman filed an Application to withdraw Plaintiffs' Motion for Preliminary Injunction.

Plaintiffs and Ms. Freedman knew the FAC no longer alleged federal trademark counterfeiting against Ms. Raymer, but continued with suppressing this information at the August 1, 2011 OSC hearing causing Ms. Raymer to needlessly spend thousands of dollars in attorneys' fees to oppose the Preliminary Injunction, not just once (when Ms. Raymer opposed the TRO App at the July 7 OSC hearing) but twice when a Supplemental Opposition was filed for the August 1 hearing. At a minimum, Ms. Freedman and Plaintiffs were under an affirmative duty to inform the Court that the Preliminary Injunction Motion no longer alleged federal trademark



1 counterfeiting claims against Ms. Raymer and did not apply to her. Instead, they  
2 continued their campaign of intimidation and pressure on Ms. Raymer to  
3 unnecessarily expend legal fees, to needlessly oppose the Motion for Preliminary  
4 Injunction twice, and to waste judicial resources.

5 **I. Ms. Freedman Changes Law Firms**

6 On July 31, 2011, Ms. Freedman executed a Notice of Change of Law Firm  
7 and Address from Clare Paulin, LLP<sup>4</sup> to Kleinberg & Lerner, LLP. This document  
8 was filed on August 1, 2011, the day of the continued Preliminary Injunction  
9 hearing. *See* Notice of Change of Firm Name and Address (Dkt No. 121). An  
10 attorney from the Kleinberg & Lerner firm was present at the hearing as an  
11 observer. Mr. Edelman was also present at the hearing. *See* Leader Decl. at ¶ 6.

12 **J. Preliminary Injunction Denied; Inadmissible Exhibit Stricken**

13 On August 1, a day after Ms. Freedman's notice of firm change and address,  
14 the Court denied the Preliminary Injunction and granted Ms. Raymer and others an  
15 extension of time to respond to the FAC. The Court also issued a Minute Order  
16 denying Plaintiffs' Application to Withdraw the Preliminary Injunction against Ms.  
17 Raymer and striking an inadmissible exhibit Ms. Freedman knowingly and  
18 improperly included as Exhibit 5 to Plaintiffs' Motion for Preliminary Injunction.  
19 This exhibit was an offer of settlement in accordance with Fed. R. Evid. 408 and  
20 was filed in another improper attempt to cast aspersions on Ms. Raymer. Any  
21 reasonably prudent attorney would know such a document was clearly inadmissible.

22 **K. Ms. Freedman Applies to Withdraw as Counsel**

23 On August 3, two days after the August 1 hearing denying Plaintiffs'  
24 Preliminary Injunction, Ms. Freedman applied *ex parte* to withdraw as counsel  
25 citing "irreconcilable differences" with her alleged sole client Wells Butler (a non-  
26 party) as the reason for her withdrawal. *See* Ex Parte Application to Withdraw as  
27 Counsel of Record with Substitution of Counsel by Hallstrom, Klein & Ward (Dkt

28 <sup>4</sup> A review of the Secretary of State websites for California, Nevada, and Delaware reveals no filing for a Clare Paulin LLP.

1 No. 124). All pleadings and motion papers represented that Ms. Freedman was the  
2 attorney of record for Plaintiffs. Not once did Ms. Freedman inform the Court that  
3 she represented only Ms. Butler. If that was the case, then Plaintiffs violated L.R.  
4 83-2.10.1 which mandates that corporations must be represented by counsel.  
5 Further, if Ms. Freedman was NOT the attorney for the plaintiff corporations, she  
6 should have disclosed this material fact to the Court but she did not.

7 **L. Hallstrom Firm Substituted as Plaintiffs' Counsel; FAC Dismissed**  
8 **against Ms. Raymer**

9 On August 8, 2011, the evening before the August 9 hearing, the Hallstrom  
10 Firm filed a substitution of attorney for Plaintiffs which appears to be signed by  
11 Craig Edelman, and not Mr. Milonas. *See* Dkt No. 133. Ms. Freedman also signed  
12 and filed a Notice of Non-Appearance using her former firm name and address,  
13 misrepresenting her status to shield the Kleinberg & Lerner firm, despite her notice  
14 to the Court and the parties that she changed her firm and address. *See* Dkt No. 132.

15 The Hallstrom Firm also filed a Motion to Dismiss Ms. Raymer, pursuant to  
16 Fed. R. Civ. P. 41(a)(2), before the Court permitted them to be substituted in as  
17 Plaintiffs' new counsel. In an August 9 Minute Order, the Court granted Ms.  
18 Freedman's withdrawal as counsel while retaining jurisdiction for the sanctions  
19 issues and substituted the Hallstrom Firm as Plaintiffs' counsel. The Minute Order  
20 also extended the deadline to file sanctions motions to September 26, 2011.

21 **M. Ms. Raymer Answers and Counter-Complains**

22 On August 9, Ms. Raymer filed her Answer to the FAC and two days later  
23 amended her Answer to add a Counter-Complaint against Plaintiffs. On August 19,  
24 without an opportunity for Ms. Raymer to oppose Plaintiffs' Rule 41(a)(2) Motion  
25 to Dismiss her from the action, the Court granted the dismissal without prejudice  
26 and *sua sponte* dismissed Ms. Raymer's Amended Answer and Counter-Complaint  
27 without prejudice. *See* Dkt No. 156. The Court retained jurisdiction over the  
28 sanctions issue as to Plaintiffs.



1           **N.     Attempts to Settle the Sanctions Issue Without Court Intervention**

2           In good faith efforts to settle the sanctions issue and pursuant to L.R. 7-3, Ms.  
3 Raymer's counsel held a telephonic discussion with: (a) Plaintiffs' counsel, Betty  
4 Levine and Grant Hallstrom, on August 24, 2011, and (b) Ms. Freedman's counsel  
5 David Parker, on September 15 and 16, 2011. Email and other communications  
6 were exchanged among counsel in further attempts to reach a settlement. These  
7 settlement and resolution meet and confers were unsuccessful, necessitating the  
8 filing of this motion. See Leader Decl. at ¶ 7.

9                                                           **III.    ARGUMENT**

10           **A.     Sanctions Against Plaintiffs and Ms. Freedman**

11                           1.     28 U.S.C. § 1927: Attorney Sanctions

12           28 U.S.C. § 1927 authorizes sanctions against an attorney who "multiplies the  
13 proceedings in any case unreasonably and vexatiously." Indeed, "subjective bad  
14 faith is sufficient" for attorney sanctions in the 9<sup>th</sup> Circuit; that is, has knowingly or  
15 recklessly raised a frivolous or meritless argument solely to harass the opposing  
16 party. *Salstrom v. Citicorp Credit Svcs., Inc.*, 74 F.3d 183, 184 (9<sup>th</sup> Cir. 1996)  
17 (citation omitted), *cert. denied*, 519 U.S. 813 (1996). Indeed, even if an attorney's  
18 arguments are meritorious, her conduct may be sanctionable if in bad faith. *New*  
19 *Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1306 (9<sup>th</sup> Cir. 1989). Thus, if §  
20 1927 violations are found, an attorney may be ordered to pay the excess costs and  
21 expenses, as well as the opposing party's attorneys' fees resulting from her conduct.

22                           2.     Central District Local Rule 83-7: Attorney and/or Client  
23                                                           Sanctions

24           Local Rule 83-7 states:

25           The violation of or failure to conform to any of these Local Rules may subject  
26 the offending party or counsel to:

- 27                   (a) monetary sanctions, if the Court finds that the conduct was willful,  
28                   grossly negligent, or reckless;  
                     (b) the imposition of costs and attorneys' fees to opposing counsel, if  
                     the Court finds that the conduct rises to the level of bad faith and/or a

1 willful disobedience of a court order; and/or  
2 (c) for any of the conduct specified in (a) and (b) above, such other  
3 sanctions as the Court may deem appropriate under the circumstances.

4 3. The Court's Inherent Power: Attorney and/or Client Sanctions

5 The Court has the inherent power to order sanctions for myriad reasons such  
6 as assessing attorneys' fees for bad faith conduct. *See Chambers v. NASCO, Inc.*,  
7 501 U.S. 32, 43-46 (1991). This includes situations where an attorney or party  
8 knowingly or recklessly raises frivolous arguments, abuses the judicial process, or  
9 acts vexatiously to harass an opponent, or other conduct of the litigation.

10 **B. Ms. Freedman and Plaintiffs Should Be Sanctioned For Bad Faith**  
11 **Tactics and Vexatious Litigation Against Ms. Raymer**

12 The record clearly demonstrates that Plaintiffs and Ms. Freedman engaged in  
13 a pattern of bad faith litigation conduct, pursuing a meritless case for the sole  
14 purpose of gaining transfer of the Primp.com domain name, which directly resulted  
15 in Ms. Raymer paying substantial attorneys' fees and costs in her defense.

16 Mr. Milonas and Ms. Butler submitted two sworn declarations in support of  
17 the TRO/Preliminary Injunction Motion and Mr. Edelman swore three declarations  
18 among other filings. Plaintiffs cannot claim ignorance of the facts of this case.

19 1. Ms. Freedman

20 Ms. Freedman's veracity should be questioned as, among other things, she  
21 misrepresented to the Court she was counsel of record for Plaintiffs and then later  
22 revealed she was purportedly representing only Ms. Butler. She acted recklessly  
23 throughout this litigation and perpetuated a fraud upon this Court by withholding  
24 material information concerning her clients and the allegations against Ms. Raymer.

25 2. Mr. Edelman

26 Mr. Edelman, who attended at least two hearings before this Court, swore  
27 three different declarations in support of various motions on behalf of Plaintiffs  
28 describing himself as "an employee of Edwards Investments, LLC" when in fact he

1 is the majority shareholder of Primp, Inc. He is described by Plaintiffs and Ms.  
2 Freedman as the owner or controlling person of Plaintiffs. *See* Leader Decl., ¶ 8.  
3 He could have disclosed his pecuniary interest with Plaintiffs in the Declaration he  
4 signed in Support of Plaintiffs’ Ex Parte App to Stay Enforcement of Order Dated  
5 July 7, 2011 [¶ 3 (Dkt No. 94)] wherein he attached a Colorado State Court order  
6 granting Edwards Investments, LLC all the shares of Primp, Inc. and the PRIMP  
7 trademark. *See id.*, Exh. 1.

8 He never disclosed this material fact in any of the three declarations that were  
9 filed. He swore under oath that Edwards Investment, LLC was the “investment  
10 banker for Industry Concept Holdings, Inc./YourWay Holding Corp.” *See* Edelman  
11 Decls., Dkt Nos. 89, 94 & 142. Mr. Edwards swears Edwards Investments, LLC “is  
12 a privately held investment banking firm that provides a broad range of financial  
13 advisory services including sale and restructuring services, and specializes in  
14 helping middle companies complete challenging financial transactions.” *See*  
15 Declaration of Edelman ISO Plaintiffs’ Mtn. for Preliminary Injunction (Dkt No. 89,  
16 at § 4). An investment bank ordinarily “assists individuals, corporations and  
17 governments in raising capital by underwriting and/or acting as the client’s agent in  
18 the issuance of securities. [It] may also assist companies involved in mergers and  
19 acquisitions . . . Indeed, an investment banker must be a licensed broker-dealer and  
20 subject to [SEC] and Financial Industry Regulatory Authority (FINRA) regulation.”  
21 *See* [http://en.wikipedia.org/wiki/Investment\\_banker](http://en.wikipedia.org/wiki/Investment_banker) (last visited Sept. 21, 2011).  
22 This description appears to be precisely what Edwards Investments, LLC and Mr.  
23 Edelman do for a living.<sup>5</sup>

24 Mr. Edelman’s lack of candor is typical of his past. Indeed, SEC records  
25 reveal that in 1999, Mr. Edelman’s SEC license was suspended and he was fined for  
26 failing to disclose his felony menacing conviction to the SEC, which casts doubt on  
27 the veracity of his declarations. *See* Leader Decl., ¶ 4, Exh. 2.

28 <sup>5</sup> Curiously, there appear to be no SEC records of Mr. Edelman or Edwards Investments licensed to provide financial advice or to sell securities in Colorado or Nevada.

1                   3.     Ms. Butler

2             Ms. Butler worked in the same warehouse as Mr. Lorber and the Pacific  
3 Apparel Defendants for years in Vernon, CA and there was not at that time, or any  
4 other time, any evidence they were working with Ms. Raymer in a counterfeiting  
5 conspiracy, yet as President of Primp she tacitly agreed to let Ms. Freedman to do  
6 whatever it took to steal the Primp.com domain name away from Ms. Raymer.

7             Pursuant to Local Rule 7.1-1, Ms. Freedman and Plaintiffs had a continuing  
8 obligation to disclose to the Court that Edwards Investments and Craig Edelman had  
9 a pecuniary interest in the outcome of the litigation. Plaintiffs cannot hide behind  
10 Ms. Freedman. They are equally culpable for the numerous bad faith tactics and  
11 vexatious litigation against Ms. Raymer and they should be compelled to explain  
12 why they dropped the federal trademark counterfeiting claim against Ms. Raymer  
13 and continued to pursue the Preliminary Injunction at the July 7 and August 1  
14 hearings anyway. They should also be compelled to explain why they waited until  
15 the very last minute before the August 1 hearing to withdraw the preliminary  
16 injunction motion when they could have withdrawn it weeks earlier.

17             **C.     Motion to Dismiss**

18             There are no excuses for Ms. Freedman's and Plaintiffs' actions in this  
19 litigation as to Ms. Raymer. The TRO and Complaints should have not ever been  
20 filed against Ms. Raymer. Ms. Raymer has suffered an indignity by being called an  
21 "apparel counterfeiter." She should not have to suffer the consequences of this  
22 action being dismissed without prejudice for fear that Plaintiffs will forge another  
23 frivolous complaint against her.

24             Fed. R. Civ. P. 41(a)(2) permits dismissal of an action by: (1) notice of  
25 dismissal filed prior to the defendant's opposition to the suit, (2) stipulation of  
26 dismissal signed by all the parties to the action; or (3) order of the Court. "If the  
27 voluntary dismissal requires an order of the Court, Rule 41(a)(2) states that the court  
28 may grant the dismissal "on terms that the court considers proper." *Moore's*

1 *Federal Practice*, § 54.171[4][b], 3d Ed. (2011). Accordingly, Ms. Raymer requests  
2 the following relief:

3 Issue terms and conditions of the voluntary dismissal on Plaintiffs. As this  
4 case has not yet been entirely disposed because of the sanctions issue, Ms. Raymer  
5 requests leave to oppose the dismissal and requests the Court condition dismissal on  
6 the following conditions: (a) if Ms. Raymer decides to dispose of the Primp.com  
7 domain name, Plaintiffs are precluded from bringing suit against her based on any  
8 contributory liability theory; (b) if Plaintiffs, their heirs, successors, and assigns  
9 should decide to refile this lawsuit in the future, Plaintiffs shall, as a condition of  
10 filing, bear any of Ms. Raymer's costs and attorneys' fees from this suit; or (c) if  
11 Plaintiffs decline to accept these terms and conditions, the case shall be dismissed  
12 with prejudice.

13 **D. Monetary Sanctions**

14 Plaintiffs' and Ms. Freedman's crusade against Ms. Raymer has been  
15 relentless. Plaintiffs and Ms. Freedman fooled this Court into believing Ms. Raymer  
16 was in the apparel business, they applied for a TRO under false pretences, and tried  
17 to use the TRO as a weapon to obtain the Primp.com domain name from Ms.  
18 Raymer. Ms. Raymer prays that the Court sanction Plaintiffs and Ms. Freedman to  
19 discourage future parties from bringing frivolous TROs for harassment purposes and  
20 to compensate her for the attorneys' fees, litigation costs and other losses she has  
21 incurred.

22 1. Ms. Freedman:

23 Ms. Freedman be sanctioned for violating 28 U.S.C. § 1927 by asserting Ms.  
24 Raymer infringed the LOVE CRUSH mark when that never occurred, by continuing  
25 a preliminary injunction against Ms. Raymer when the federal trademark  
26 counterfeiting claim for relief had been withdrawn thereby unnecessarily  
27 multiplying the proceedings and wasting judicial resources, by harassing Ms.  
28 Raymer by scaring her and causing her undue hardship, and /or based on L.R. 83-7

1 for her reckless conduct, or based on this Court's inherent powers for her bad faith  
2 conduct as heretofore described.

3           2.     Plaintiffs:

4           Plaintiffs have been fully aware of this litigation and the details of it since its  
5 inception. They do not want to compensate Ms. Raymer for all of the unnecessary  
6 legal expenses they made her incur and now think they he can hide behind Ms.  
7 Freedman and a motion to dismiss to never make her whole.

8           Accordingly, Plaintiffs should be sanctioned based on the Court's inherent  
9 powers for their active involvement in perpetrating a fraud on the Court by  
10 intentionally withholding Edwards Investments and Mr. Edelman's direct pecuniary  
11 interests in the litigation, bringing needless litigation against Ms. Raymer forcing  
12 her to spend thousands of dollars on her defense in a failed attempt to take away the  
13 Primp.com domain name away from her, making material misrepresentations,  
14 omissions, suppressing evidence, and unnecessarily multiplying the proceedings  
15 with more than 160 docket entries and counting since late May and multiple  
16 unnecessary applications and hearings, often caused by litigation misconduct  
17 (sealing the record, for example) and or counsel's lack of preparation at hearings.

18           3.     Plaintiffs and Ms. Freedman:

19           Plaintiffs and Ms. Freedman be held jointly and severally liable for their bad  
20 faith in bringing vexatious litigation against Ms. Raymer in the amount of  
21 \$96,333.59. See Leader Decl., ¶ 9. Plaintiffs should also be also ordered to take all  
22 steps necessary to pay, release or transfer to defendant Raymer any bond Plaintiffs  
23 posted in support of the TRO or otherwise.

24                               **IV. CONCLUSION**

25           Accordingly, and for the foregoing reasons, the Court should: (a) order  
26 dismissal of the action with prejudice against defendant VL Raymer, (b) order  
27 Plaintiffs and Edwards Investments, and their former counsel Wendy C. Freedman  
28 to jointly and severally pay monetary sanctions to Ms. Raymer in the amount of

1 \$96,333.59 within sixty days (whether by release of bonds or otherwise). If  
2 sanctions are not paid within that time, the Court should issue a judgment assigning  
3 the Primp trademark to Ms. Raymer.

4  
5 DATED: September 26, 2011

LEADER GORHAM LLP

6  
7 By: /s/Jon M. Leader

8 Jon M. Leader

9 LAW OFFICES OF KAREN J.  
10 BERNSTEIN, LLC

11  
12 By: /s/Karen J. Bernstein

13 Karen J. Bernstein (*Pro Hac Vice*)

14 Attorneys for Defendant VL RAYMER  
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